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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

SEDGWICK, LLP,

Debtor.

Case No.: 18-31087 (HLB)

Chapter 11

**MOTION FOR ORDER EXTENDING THE
TIME PERIODS DURING WHICH THE
DEBTOR HAS THE EXCLUSIVE RIGHT
TO FILE A PLAN AND TO SOLICIT
ACCEPTANCES THEREOF PURSUANT
TO SECTION 1121(D) OF THE
BANKRUPTCY CODE; MEMORANDUM
OF POINTS AND AUTHORITIES**

Hearing Date:

Date: January 24, 2019
Time: 10:00 a.m.
Place: United States Bankruptcy Court
450 Golden Gate Avenue, 16th Floor
Courtroom 19
San Francisco, California 94102
Judge: Honorable Hannah L. Blumenstiel

I.

BACKGROUND

A. Jurisdiction and Venue

The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for proceedings on this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

1 **B. General Background**

2 On October 2, 2018 (the “*Petition Date*”), the Debtor filed a voluntary petition for relief
3 under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy
4 Code, the Debtor remains in possession of its property and is managing its affairs and operating its
5 business as debtor in possession. On October 14, 2018, the Office of the United States Trustee
6 appointed an official committee of unsecured creditors (the “*Committee*”). *See* [Docket No. 37].

7 **C. The Plan Filing and Solicitation Deadlines**

8 Under section 1121 of the Bankruptcy Code, the Debtor has the exclusive right to file a plan
9 for the 120 days after the Petition Date and the exclusive right to solicit acceptances thereto for the
10 180 days after the Petition Date.

11 **II.**

12 **RELIEF REQUESTED**

13 By this Motion, the Debtor, pursuant to section 1121(d) of the Bankruptcy Code, is seeking
14 entry of an order (a) extending the exclusive periods to file and solicit a plan through and including
15 March 30, 2019 and June 29, 2019, respectively, (b) preserving the right to seek further extensions
16 upon cause, and (c) any other relief that is necessary and proper. This Motion is based upon this
17 Motion and Memorandum of Points and Authorities, the Notice of Motion, and the Declaration of
18 Gregory C. Read (the “*Read Declaration*”), attached hereto as **Exhibit A**, all pleadings and papers
19 on file in this case, the oral argument of counsel, and any evidence submitted to the Court prior to or
20 during the hearing on this Motion.

21 **III.**

22 **ARGUMENT**

23 Section 1121(d) of the Bankruptcy Code authorizes bankruptcy courts to extend the exclusive
24 periods to file a plan and solicit votes (the “**Exclusive Periods**”) “for cause” after notice and a
25 hearing. Although the term “cause” is not defined by the Bankruptcy Code, the legislative history
26 indicates that it is to be viewed flexibly “in order to allow the debtor to reach an agreement.” H.R.
27 Rep. No. 95, 95th Cong., 1st Sess. 232 (1997); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 833
28 (Bankr. S.D.N.Y. 1987) (*quoting* H.R. Rep. No. 595, 95th Cong., 2d Sess. 231 (1978), *reprinted in*

1 1978, U.S.C.C.A.N. 5963, 6190); *In re Public Serv. Co. of New Hampshire*, 88 B.R. 521, 534
2 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility”).

3 To facilitate this legislative intent, a debtor should be given a reasonable opportunity to
4 negotiate an acceptable plan with creditors and to prepare adequate financial and nonfinancial
5 information concerning the ramifications of any proposed plan for disclosure to creditors. *See, e.g.,*
6 *In re McLean Indus., Inc.*, 87 B.R. at 833-34; *In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y.
7 1987).

8 Courts have relied on a variety of factors when determining whether cause exists for an
9 extension of the Exclusive Periods, each of which may provide sufficient grounds for extending the
10 Exclusive Periods. These factors include (a) the size and complexity of the case, (b) the necessity of
11 sufficient time to negotiate and prepare adequate information, (c) the existence of good faith
12 progress toward reorganization, (d) whether the debtor is paying its debts as they come due,
13 (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan, (f) whether the
14 debtor has made progress in negotiating with creditors, (g) the length of time the case has been
15 pending, (h) whether the debtor is seeking the extension to pressure creditors, and (i) whether
16 unresolved contingencies exist. *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex.
17 1996); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997). In assessing a
18 debtor in possession’s first request for an extension of the Exclusive Periods under section 1121(d),
19 “bankruptcy courts apply a lesser standard in determining whether the burden of showing ‘a
20 reasonable possibility of a successful reorganization within a reasonable time’ has been satisfied.”
21 *In re Apex Pharmaceuticals, Inc.*, 203 B.R. 432, 441 (N.D. Ind. 1996).

22 Under these standards, cause has been found to extend the Exclusive Periods where the
23 debtor has worked diligently to propose a plan, the case is large and complex and the extension was
24 neither indefinite nor used to force a creditor to accept an undesirable plan. *In re Gibson &*
25 *Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989) (affirming an extension for one and
26 one half years where the debtor had not yet proposed a plan acceptable to creditors, but progress had
27 been made); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (the pace of the
28 turnaround effort had been reasonably rapid, even though the debtor had produced only losses and

1 the ultimate success of the turnaround efforts was as yet unknowable); *In re Texaco, Inc.*, 76 B.R. at
2 327 (where the extension was not for the purpose of allowing the debtor to prolong reorganization
3 while pressuring a creditor to accept an undesirable plan); *In re Texaco, Inc.*, 81 B.R. 806, 812-13,
4 (Bankr. S.D.N.Y. 1987) (granting subsequent extension where several constituencies supported
5 debtor's plan, there was no evidence the debtor was using the extension to pressure acceptance of the
6 plan, and there was no evidence the plan violated any requirements under section 1123 of the
7 Bankruptcy Code).

8 Applying these standards, the Ninth Circuit Bankruptcy Appellate Panel affirmed the
9 extension of exclusivity where the bankruptcy court "saw the situation as: (a) a first extension; (b) in
10 a complicated case; (c) that had not been pending for a long time, relative to its size and complexity;
11 (d) in which the debtor did not appear to be proceeding in bad faith; (e) had improved operating
12 revenues so that it was paying current expenses; (f) had shown a reasonable prospect for filing a
13 viable plan; (g) was making satisfactory progress negotiating with key creditors; (h) did not appear
14 to be seeking an extension of exclusivity to pressure creditors; and (i) was not depriving the
15 Committee of material or relevant information." *In re Henry Mayo Newhall Memorial Hosp.*, 282
16 B.R. 444, 452 (9th Cir. BAP 2002). The panel further noted: "We also agree with the *Dow Corning*
17 court that a transcendent consideration is whether adjustment of exclusivity will facilitate moving
18 the case forward toward a fair and equitable resolution." *Id.* (citing *In re Dow Corning*, 208 B.R. at
19 670).

20 The Debtor believes that cause exists to grant the requested relief for the following reasons.
21 First, the Debtor is engaged with the Committee. On October 10, 2018, the Office of the United
22 States Trustee appointed the Committee. On October 19, 2018, the Committee retained counsel.
23 Immediately after the Committee's selection of counsel, the Debtor and its advisors began
24 communicating and exchanging information with the Committee and its advisors. In that regard, the
25 Debtor shared drafts of accounts receivable procedures and client file disposition procedures with
26 the Committee, who provided comments that the Debtor agreed to incorporate. In addition, the
27 Debtor scheduled an in-person meeting with the Committee and its advisor for November 14, 2018
28 where the parties would discuss the Debtor's analysis of potential clawback claims against the

Debtor's former equity partners. At that time, the Committee elected to postpone the meeting and made an informal document request regarding the Debtor's financial affairs and distributions made to former equity partners. The Debtor produced information responsive to the Committee's document request. Subsequently, the parties met in-person on December 17, 2018, and produce additional information regarding distributions to former equity partners. At the time of filing this Motion, the Committee and its professionals are reviewing the information the Debtor provided. The Debtor expects that the Committee and its advisors will have follow up questions regarding the information produced. The Debtor believes that a resolution regarding the potential partner claw backs will form the basis of any plan of liquidation. The Debtor expects the Committee and its advisors to respond and/or schedule another in-person meeting so that the parties can advance the discussion regarding these claims.

Second, the Debtor has been actively engaged in administering its chapter 11 case in other ways too. For example, the Debtor obtained authority to implement collection procedures regarding its outstanding accounts receivable. The Debtor's schedules reflect that as of the Petition Date that approximately \$1,000,000 accounts receivables will likely be collected. As of the filing of this Motion, the Debtor has collected nearly \$300,000. Plus, the Debtor and its advisors have served approximately sixty demand letters on former clients to pay outstanding invoices, which have a face amount over \$1.25 million. The Debtor also obtained authorization to implement disposition procedures regarding the files of former clients. The Debtor has approximately 170,000 client files in storage. The Debtor has been in the process of notifying former clients to retrieve their files or direct the Debtor how to dispose of them.

Third, the Debtor's case has not been pending for a very short period of time, less than 100 days.

Fourth, the Debtor is paying its debts as they come due and filing its monthly operating reports.

Fifth, this Motion constitutes the Debtor's first request to extend the plan exclusivity periods. The Debtor requests an extension of the exclusive periods to file a plan and solicit acceptances thereof through and including March 30, 2019 and June 29, 2019, respectively (*i.e.*, for ninety (90)

1 days). The relief requested is not a delay tactic or a means to pressure the Committee or creditors. In
2 fact, the Debtor believes that additional time is necessary so that the Debtor and the Committee can
3 attempt to resolve the potential partner claw back claims consensually and also negotiate the terms
4 of plan.

5 Based on the foregoing, the Debtor submits that good cause exists for the relief requested
6 herein and that such relief is in the best interest of the estate.

7 **IV.**

8 **CONCLUSION**

9 **WHEREFORE**, the Debtor respectfully requests that the Court enter an Order, in the form
10 annexed hereto as **Exhibit B**, (a) extending the Debtor's exclusive period to file a plan through and
11 including March 30, 2019; (b) extending the Debtor's exclusive period to solicit acceptance of such
12 plan through and including June 29, 2019; and (c) granting such other and further relief as the Court
13 deems proper.

14 Dated: December 27, 2018

PACHULSKI STANG ZIEHL & JONES LLP

15 /s/ John W. Lucas

16 John W. Lucas

17 Attorneys for Sedgwick, LLP
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EXHIBIT A
(Read Declaration)

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

SEDGWICK, LLP,

Debtor.

Case No.: 18-31087 (HLB)

Chapter 11

**DECLARATION OF GREGORY C. READ
IN SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT
PROCEDURES FOR COMPROMISING
ACCOUNTS RECEIVABLE**

Date: January 24, 2019
Time: 10:00 a.m.
Place: 450 Golden Gate Avenue
Courtroom 19
San Francisco, CA 94102
Judge: Honorable Hannah L. Blumenstiel

I, Gregory C. Read, declare as follows:

I am a member of Sedgwick LLP's (the "**Debtor**") dissolution committee. Prior to my appointment to the dissolution committee, I was a non-equity partner. During my career, I had been a non-equity partner for approximately 10 years, an equity partner for 32 years, and an attorney at the Debtor. My background is further detailed in my declaration in support of first day motions [Docket No. 2], which is incorporated herein by reference. I make this declaration in support of the *Debtor's Motion for Order Extending the Time Periods During Which the Debtor Has the Exclusive*

1 *Right to File a Plan and to Solicit Acceptances Thereof Pursuant to Section 1121(d) of the*
2 *Bankruptcy Code (the “**Motion**”).*¹

3 If called as a witness, I could and would testify from my own personal knowledge with
4 respect to the matters set forth in this Declaration, except as otherwise stated. Except as otherwise
5 noted, this Declaration is based upon my personal knowledge of the operations and finances of the
6 Debtor, information learned from my review of relevant documents and information supplied to me
7 by the Debtor and Debtor’s other advisors, information provided to me by other advisors of the
8 Debtor, and records kept in the ordinary course of business by the Debtor.

9 On October 2, 2018 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief
10 under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy
11 Code, the Debtor remains in possession of its property and is managing its affairs and operating its
12 business as debtor in possession.

13 By the Motion, the Debtor, pursuant to section 1121(d) of the Bankruptcy Code, is seeking
14 entry of an order (a) extending the exclusive periods to file and solicit a plan through and including
15 March 30, 2019 and June 29, 2019, respectively, (b) preserving the right to seek further extensions
16 upon cause, and (c) any other relief that is necessary and proper.

17 I believe that cause exists to grant the requested relief for the following reasons. First, the
18 Debtor is engaged with the Committee. On October 10, 2018, the Office of the United States Trustee
19 appointed the Committee. On October 19, 2018, the Committee retained counsel. Immediately after
20 the Committee’s selection of counsel, the Debtor and its advisors began communicating and
21 exchanging information with the Committee and its advisors. In that regard, the Debtor shared drafts
22 of accounts receivable procedures and client file disposition procedures with the Committee, who
23 provided comments that the Debtor agreed to incorporate. In addition, the Debtor scheduled an in-
24 person meeting with the Committee and its advisor for November 14, 2018 where the parties would
25 discuss the Debtor’s analysis of potential clawback claims against the Debtor’s former equity
26 partners. At that time, the Committee elected to postpone the meeting and made an informal
27 document request regarding the Debtor’s financial affairs and distributions made to former equity
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¹ Capitalized words not defined herein have the meanings used in the Motion.

1 partners. The Debtor produced information responsive to the Committee' document request.

2 Subsequently, the parties met in-person on December 17, 2018 (including me and one other member
3 of the dissolution committee), and produce additional information regarding distributions to former
4 equity partners. At the time of filing this Motion, the Committee and its professionals are reviewing
5 the information the Debtor provided. I expect that the Committee and its advisors will have follow
6 up questions regarding the information produced. I believe that a resolution regarding the potential
7 partner claw backs will form the basis of any plan of liquidation. I further expect the Committee and
8 its advisors to respond and/or schedule another in-person meeting so that the parties can advance the
9 discussion regarding these claims.

10 Second, the Debtor has been actively engaged in administering its chapter 11 case in other
11 ways too. For example, the Debtor obtained authority to implement collection procedures regarding
12 its outstanding accounts receivable. The Debtor's schedules reflect that as of the Petition Date that
13 approximately \$1,000,000 accounts receivables will likely be collected. As of the filing of this
14 Motion, the Debtor has collected nearly \$300,000. Plus, the Debtor and its advisors have served
15 approximately sixty demand letters on former clients to pay outstanding invoices, which have a face
16 amount over \$1.25 million. The Debtor also obtained authorization to implement disposition
17 procedures regarding the files of former clients. The Debtor has approximately 170,000 client files in
18 storage. The Debtor has been in the process of notifying former clients to retrieve their files or direct
19 the Debtor how to dispose of them.

20 Third, the Debtor's case has not been pending for a very short period of time, less than 100
21 days.

22 Fourth, the Debtor is paying its debts as they come due and filing its monthly operating
23 reports.

24 Fifth, this Motion constitutes the Debtor's first request to extend the plan exclusivity periods.
25 The Debtor requests an extension of the exclusive periods to file a plan and solicit acceptances
26 thereof through and including March 30, 2019 and June 29, 2019, respectively (*i.e.*, for ninety (90)
27 days). The relief requested is not a delay tactic or a means to pressure the Committee or creditors. In
28

1 fact, I believe that additional time is necessary so that the Debtor and the Committee can attempt to
2 resolve the potential partner claw back claims consensually and also negotiate the terms of plan.

3 Based on the foregoing, I submit that good cause exists for the relief requested herein and
4 that such relief is in the best interest of the estate.

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my
6 knowledge and belief. Executed on December 27, 2018, in San Francisco, California.

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9 Gregory C. Read
10 Member of Dissolution Committee
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EXHIBIT B
(Proposed Order)

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

SEDGWICK, LLP,

Debtor.

Case No.: 18-31087 (HLB)

Chapter 11

Jointly Administered

**ORDER GRANTING MOTION
EXTENDING THE TIME PERIODS
DURING WHICH THE DEBTOR HAS THE
EXCLUSIVE RIGHT TO FILE A PLAN
AND TO SOLICIT ACCEPTANCES
THEREOF PURSUANT TO SECTION
1121(D) OF THE BANKRUPTCY CODE**

Upon the *Motion for Order Extending the Time Periods During Which the Debtor Has the Exclusive Right to File a Plan and to Solicit Acceptances Thereof Pursuant to Section 1121(d) of the Bankruptcy Code* (the “**Motion**”)¹ seeking an extension of the time to file and solicit acceptances of a plan, as set forth in greater detail in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interest of the Debtor’s estate, its creditors, and all other parties in interest; and the Debtor having provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and no other or further notice need be provided; and the Court having considered the Motion, all pleadings and papers filed in

¹ Capitalized terms not defined herein shall have the meanings used in the Motion.

ORDERED THAT:

1. The Motion is **GRANTED**.
2. The Debtor's exclusive right to file a plan is extended through and including March 30, 2019.
3. The Debtor's exclusive right to solicit acceptances from creditors for their plan is extended through and including June 29, 2019.
4. The relief granted herein shall not prejudice the Debtor from seeking further extensions upon a showing of cause or parties in interest from seeking to shorten or terminate the Debtor's exclusive rights to file and solicit acceptances of a plan upon a showing of cause.
5. The Court retains jurisdiction to interpret and enforce the terms of this Order.

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